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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 ALLSTATE INSURANCE COMPANY, et
9 al.,

10 Plaintiffs,

11 v.

12 PETER MARIO BALLE, D.C., et al.,

13 Defendants.

Case No. 2:10-CV-02205-KJD-GWF

ORDER

14 Presently before the Court are Defendants' Motions to Dismiss (##7, 9, 13, 59). Plaintiffs
15 filed Oppositions (##12, 19, 20, 60) to which Defendants replied. Specifically, Defendants request
16 that the Court dismiss Plaintiffs' cause of action pursuant to Fed. R. Civ. P. 12(b)(6) and 9(b) for
17 failure to state a claim upon which relief can be granted.

18 Plaintiffs filed their initial Complaint (#1) on December 20, 2010. The initial Complaint (#1)
19 and Amended Complaint (#17) allege violations of federal and state Racketeering and Corrupt
20 Organizations Acts with various fraud-based activities as the predicate crimes. Plaintiffs also include
21 counts of common-law fraud and conspiracy to defraud.

22 **I. Legal Standard**

23 Rule 9(b) states that a party asserting a claim for fraud "must state with particularity the
24 circumstances constituting fraud." Fed. R. Civ. P. 9(b). This heightened requirement may be met
25 by making allegations "specific enough to give defendants notice of the particular misconduct which
26 is alleged to constitute the fraud charged so that they can defend against the charge and not just deny

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2 that they have done anything wrong.” Bly-Magee v. California, 236 F.3d 1014, 1018 (9th Cir. 2001)
3 (quoting Neubronner v. Milken, 6 F.3d 666, 672 (9th Cir. 1993)). Such allegations must “state the
4 time, place, and specific content of the [fraud] as well as the identities of the parties to the [fraud].”
5 Schreiber Distrib. Co. v. Serve-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986).

6 **II. Analysis**

7 **A. Heightened Pleading Standard**

8 Defendants correctly note that Plaintiffs’ complaint fails to meet the heightened pleading
9 standard of cases involving fraud under Rule 9(b) since Plaintiffs’ Amended Complaint (#17) fails to
10 state with particularity the circumstances constituting fraud. However, Plaintiffs aver in their
11 Opposition (#12) that they possess sufficient information to meet the heightened pleading standard of
12 Rule 9(b), but refrained from including the information in their pleadings because of its confidential
13 nature. Specifically, Plaintiffs refrained from including in their pleadings information regarding the
14 identities, medical treatments, and dates of medical treatments of the patients that Defendants
15 allegedly used to commit the alleged fraud.

16 Plaintiffs requested that the Court grant a protective order so they could furnish the Court
17 with confidential facts that would allow them to state, with particularity, the circumstances
18 constituting fraud. Magistrate Judge George Foley, Jr. entered a Protective Order Governing
19 Confidentiality of Documents (#52) on June 13, 2011. The Protective Order provides that, with the
20 Court’s leave, the parties may seal documents that are deemed to contain confidential or secret
21 information. Plaintiffs further request that, in the event that the Court finds Plaintiffs’ pleadings
22 insufficient to meet Rule 9(b) standards, the Court grant them leave to amend.

23 **B. Leave to Amend**

24 “After a party has amended a pleading once as a matter of course, it may only amend further
25 after obtaining leave of the court, or by consent of the adverse party.” Fed. R. Civ. P. 15(a). Rule
26 15(a)(2) provides that courts “should freely give leave [to amend] when justice so requires.” Fed. R.

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2 Civ. P. 15(a)(2). Under this standard, there is a general “policy to permit amendment with ‘extreme
3 liberality.’” Chodos v. West Publ’g Co., 292 F.3d 992, 1003 (9th Cir. 2002) (quoting Morongo Band
4 of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990)). This “extreme liberality” is
5 tempered, however, by other considerations. Thus, “[w]hen considering a motion for leave to
6 amend, a district court must consider whether the proposed amendment results from undue delay, is
7 made in bad faith, will cause prejudice to the opposing party, or is a dilatory tactic.” Id. (citing
8 Foman v. Davis, 371 U.S. 178, 182 (1962)); see also Forsyth v. Humana, Inc., 114 F.3d 1467, 1482
9 (9th Cir. 1997). The reviewing court should also consider the futility of the proposed amendment.
10 See Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (citing Foman,
11 371 U.S. at 182). Where there is undue prejudice to the opposing party, see Eminence, 316 F.3d at
12 1052, or futility of amendment, see Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995), such factors
13 can, by themselves, “justify the denial of a motion for leave to amend,” Id. Additionally, where there
14 is “a strong showing of any of the remaining . . . factors,” denial of a motion for leave to amend is
15 also justified. Eminence, 316 F.3d at 1052.

16 The Court finds that Plaintiffs’ request for leave to amend was not made in bad faith or as an
17 attempt to cause delay. Additionally, granting Plaintiffs leave to amend would not unduly prejudice
18 the Defendants. The Court finds that Plaintiffs’ request for leave to amend is not futile and should
19 therefore be granted. Due to the sensitive nature of the information required to cure the defects in
20 Plaintiffs’ pleadings, Plaintiffs have leave of the Court to seal the newly-amended complaint
21 pursuant to the Protective Order Governing Confidentiality of Documents (#52).

22 III. Conclusion

23 Accordingly, **IT IS HEREBY ORDERED** that Plaintiffs file a sealed and amended
24 complaint curing the deficiencies in their pleadings within fifteen (15) days, after which, Defendants
25 may re-file their motions to dismiss.
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2 **IT IS FURTHER ORDERED** that Defendants' Motions to Dismiss (##7, 9, 13, 59) are
3 **DENIED** as moot.

4 Dated this 26th day of July 2011.

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8 Kent J. Dawson
9 United States District Judge
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